Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Am. S.B. 323** DATE: **May 19, 2008**

STATUS: **As Passed by the Senate** SPONSOR: **Sen. Niehaus**

LOCAL IMPACT STATEMENT REQUIRED: **No — No local cost**

CONTENTS: **Revises mine safety requirements**

State Fiscal Highlights

STATE FUND	FY 2009	FY 2010	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase
Mining Regulation Fund (Fund 5B30) – Department of Natural Resources			
Revenues	Gain of approximately $400	Potential minimal gain	Potential minimal gain
Expenditures	- 0 -	- 0 -	- 0 -
Surface Mining Fund (Fund 5270) – Department of Natural Resources			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	- 0 -	- 0 -	- 0 -
Mine Safety Fund (New Fund 5X80) – Department of Natural Resources			
Revenues	Gain of approximately $5.5 million in transfers from BWC's Coal Workers' Pneumoconiosis Fund	Potential gain from BWC's Coal Workers' Pneumoconiosis Fund and/or other sources to be determined by DNR	Potential gain from BWC's Coal Workers' Pneumoconiosis Fund and/or other sources to be determined by DNR
Expenditures	Increase of approximately $5.5 million for start-up and capital costs and mine safety program operation	Approximately $2.8 million for mine safety program operation	Potential increase or decrease for program operations
Coal Workers' Pneumoconiosis Fund – Bureau of Workers' Compensation			
Revenues	Loss of approximately $5.5 million from transfer of investment income to the DNR Mine Safety Fund	Potential loss from transfers of investment income to the Mine Safety Fund, depending on other funding sources identified by DNR	Potential loss from transfers of investment income to the Mine Safety Fund, depending on other funding sources identified by DNR
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- The bill requires the Bureau of Workers' Compensation (BWC) to transfer funds from the Coal Workers' Pneumoconiosis Fund to the newly established Mine Safety Fund (Fund 5X80) in the Department of Natural Resources (DNR). The projected transfer is expected to be $5.5 million in FY 2009, and would cover first-year start-up for DNR's expanded mine safety program, as well as the costs of DNR's ongoing mine safety responsibilities.

- The bill includes intent language that requires DNR to seek another source of funding to sustain the expanded mine safety program after FY 2009. However, the bill does not lay out a specific timeline for DNR to identify new funding sources, except to state that DNR must examine such sources and report its findings to BWC prior to the five-year review of the rules governing the initial transfer from BWC.

- The bill includes new regulatory responsibilities to be handled by DNR's Division of Mineral Resources Management, the bulk of which would be supported by the Mine Safety Fund (Fund 5X80) created in the bill. These new responsibilities involve mine safety training, rescue, and certification and recertification of mine officials. Projected expenses, including start-up costs are expected to be $5.5 million in FY 2009 and $2.8 million in FY 2010. Future year expenses would depend on the scope of the mine safety program.

- The Mining Regulation Fund (Fund 5B30) may experience gains, likely in the hundreds of dollars, from additional examination fees for recertification and retraining of mine forepersons, and the Surface Mining Fund (Fund 5270) may also experience similar small gains from additional examination fees for certifying mine medical responders.

- General Revenue Fund line item 744321, Division of Mineral Resources Management, may incur minimal additional administrative expenses as a result of the implementation of measures in the bill.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

In response to new federal requirements and recommendations made in 2006 by the Ohio Underground Mine Safety Task Force, the bill makes revisions to the safety laws governing Ohio's ten underground coal mines and four noncoal mines, including establishing a new Mine Safety Fund (Fund 5X80), amending the requirements for the certification of mine forepersons, creating a new class of safety employee called a "mine medical responder," and requiring mines to implement other safety measures. The bill declares an emergency for preserving the public peace, health, and safety by including measures to allow for the implementation of a rapid response to mine incidents, and as such the bill would go into immediate effect. The Department of Natural Resources (DNR) has indicated that it hopes to begin implementing the programs specified in the bill on July 1, 2008, the beginning of FY 2009.

Mine Safety Fund (Fund 5X80)

The bill creates a new Mine Safety Fund (Fund 5X80) in the state treasury, to be funded initially by a transfer from the Coal Workers' Pneumoconiosis Fund in the Bureau of Workers' Compensation (BWC). The Mine Safety Fund would be housed within DNR, specifically under the control of the Division of Mineral Resources Management. The bill requires the Division to use the Mine Safety Fund for (1) health inspections and audits, (2) the purchase and maintenance of mine rescue and inspection equipment, (3) the purchase or lease of facilities for use as mine rescue stations and for mine rescue and safety training, (4) mine rescue, health, and safety training for miners, and (5) certification and recertification of mine officials.

Transfer from BWC's Coal Workers' Pneumoconiosis Fund

The bill specifies that the Mine Safety Fund is to be capitalized by transfers of investment earnings from the BWC's Coal Workers' Pneumoconiosis Fund, which pays benefits on medical and indemnity claims relating to black lung disease. The amount to be transferred will depend upon the first-year costs of the mine safety program, which DNR projects to be $5,528,000 in FY 2009. Of this figure, approximately $2,682,000 will be one-time start-up costs for new equipment and locating a new emergency response center, the fourth of its kind in Ohio. The remaining amount, approximately $2,843,000, will be used for program operations. Included in these anticipated operating costs are ongoing mine safety program expenses, which were $1,881,021 in FY 2007, and an additional $961,979 for new activities required under the bill.

The bill requires that the transfer from BWC's Pneumoconiosis Fund not jeopardize that fund's solvency. Currently, the net assets of the fund are $183.8 million, with $62.2 million reserved for outstanding liabilities. Though BWC does not yet know what the fund's investment earnings will be for FY 2008, it is expected that they will be in excess of DNR's mine safety program costs, as investment income during FY 2007 was approximately $13.57 million. Barring any drastic increase in black lung related liabilities, the proposed transfers will not change the ratio of assets to liabilities and will therefore not threaten the solvency of the fund.

The bill also contains intent language providing that this fund transfer is not to be a long-term source of revenue for the Mine Safety Fund, that the transfer from the Coal Workers' Pneumoconiosis Fund is not to set a precedent for any other transfers from BWC funds, and directs DNR to explore alternative revenue streams. DNR has not yet declared a source for ongoing revenues to the fund, but intends to begin a stakeholder process to identify future funding streams. The bill requires DNR to report on possible sources of funding to the Mine Safety Fund before the five-year review process for the rules adopted to govern the initial transfer from the Black Lung Fund begins. DNR currently estimates that the Mine Safety Fund will be responsible for ongoing annual operating costs roughly equal to the $2,843,000 figure mentioned above.

Certification of mine forepersons – Mining Regulation Fund (Fund 5B30)

The bill requires the recertification of mine forepersons who have not worked in an underground coal mine for more than two years, and requires forepersons who have not worked in an underground coal mine for at least one year to complete a retraining course. The bill requires the Division of Mineral Resources Management to adopt rules governing recertification and retraining, including setting fees for recertification and retraining exams. Currently, DNR collects a $10 fee for such exams, which is deposited into the Mining Regulation Fund (Fund 5B30). Historically, DNR has tested approximately 300 people per year, generating about $3,000 in income from testing fees.

The Department has indicated that it does not intend to change the amount of the fee or the procedures for depositing it into the Mining Regulation Fund. However, DNR anticipates testing approximately 40 additional individuals under the bill's provisions for recertification, for additional income of approximately $400 in the first year of the program. There may be additional minimal gains in revenue in future years, depending on the number of forepersons who need to be recertified. The main operating budget for FY 2008-FY 2009 provided funding of $28,850 in each fiscal year for miner testing. As of May 6, 2008, the cash balance in the Mining Regulation Fund was $118,952.

In addition, the bill includes "certification and recertification of mine officials" among the costs to be covered out of the Mine Safety Fund, so it is possible that future administrative costs of training and recertification exams could be paid out of the new fund.

Mine medical responders – Surface Mining Fund (Fund 5270)

The bill codifies "mine medical responders" as a class of employee that performs mine safety duties alongside emergency medical technicians and other designated safety personnel. In addition to laying out the requirements for being designated as a mine medical responder, the bill adds such individuals to the current law governing mine safety personnel. This includes requiring the Chief of the Division of Mineral Resources Management to adopt rules that set certain training requirements for mine medical responders, including setting a fee for mine medical responder examinations. Like the fees for examining other mine safety personnel, mine medical responder fees would be deposited into the Surface Mining Fund (Fund 5270). This fund may experience a minimal gain in revenues from these fees, with the amount depending on the number of mine medical responders taking the exams. The main operating budget for FY 2008-FY 2009 provided funding of $1,852,842 in FY 2008 and $1,946,591 in FY 2009 for these activities. The available cash balance in the fund as of May 6, 2008 was $1,519,087.

In addition, the bill includes "mine rescue and safety training" among the costs to be covered out of the Mine Safety Fund, so it is possible that future administrative costs of training for mine medical responders and other mine safety personnel could be paid out of the new fund.

Mine safety apparatus inspections

The bill requires an underground coal mine operator to provide tag lines and tie-off lines for each miner and to provide fire detection devices for each conveyor belt that is used in a mine. In this regard, the bill requires the Division of Mineral Resources Management, in consultation with statewide associations representing the coal mining industry and its employees, to adopt rules that include provisions for the inspection of this equipment, but does not provide for a fee for doing so. DNR has indicated that there are no plans to institute such a fee.

The costs of additional inspection time and associated administrative work will be paid from the new Mine Safety Fund. Other administrative costs associated with these inspections, as well as the other provisions in the bill, may cause a minimal increase in expenditures from GRF operating line item 744321, Division of Mineral Resources Management. However, most costs associated with the provisions in the bill would be borne by the other funds as described above.

Liability of Division employees

The bill generally exempts employees of the Division of Mineral Resources Management who perform rescue work from liability in a civil action, with the exception of cases in which the state of Ohio is the plaintiff or in cases in which employees acted with malicious intent, in bad faith, or in a reckless manner. According to DNR, there have been no lawsuits in the past that have involved Division employees, and the Department has not incurred any costs of that nature. While it does not anticipate any future civil actions, DNR has indicated that in the event of such a case, several sources could be drawn upon to cover the costs, including the GRF for in-house legal work, and the Mining Regulation Fund (Fund 5B30) and the Surface Mining Fund (Fund 5270) for outside counsel representation. Currently, the Division has 19 full-time employees, including 14 inspectors and trainers and 2 Mine Rescue Operations Coordinators.

BWC – Micro Insurance Reserve Analysis System (MIRA II)

Am. Sub. H.B. 100, the FY 2008-FY 2009 budget act for BWC, required the agency to implement a new system for establishing premium rates. The current Micro Insurance Reserve Analysis System (MIRA) calculates the funds needed to be held in reserve by BWC to cover its expected liabilities. Premium rates are set according to the necessary reserve amounts. Am. Sub. H.B. 100 stipulates that the new reserve system (MIRA II) must be more transparent and accurate than the current system.

The bill changes the implementation date of the new system from June 30, 2008 to July 1, 2008. The change is being made in order to ensure a smoother transition between the two systems, as MIRA publishes reserve amounts on the last day of the month. If the June 30 date were to stand, BWC would be required to report its reserves for the end of FY 2008 using the new system, which is intended to be in place starting with FY 2009. This could cause issues with the generation and use of BWC's reporting of its reserve data. The date change allows for

the reserving process to begin using the new system in FY 2009. There is not expected to be any cost associated with the change in implementation date.

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